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Appropriations Committee
February 02, 2010

[LB1030 LB1063]

The Committee on Appropriations met at 1:30 p.m. on Tuesday, February 2, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1030 and LB1063. Senators present: Lavon Heidemann, Chairperson; John Harms, Vice Chairperson; Danielle Conrad; Tony Fulton; Tom Hansen; Heath Mello; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: None.

SENATOR HEIDEMANN: I think we're going to go ahead and get started. We got a couple members that will be joining us a little bit later. I think we're going to go ahead and start with self-introductions, starting over to my right. []

SENATOR NORDQUIST: Jeremy Nordquist, District 7, downtown and south Omaha.

SENATOR HANSEN: Tom Hansen, District 42, the "French Riviera" of the Sandhills.

SENATOR HEIDEMANN: Joining us later will be Senator Danielle Conrad from Lincoln, the "Fighting 46" District, she always reminds us; Senator John Wightman from beautiful Lexington; to my right is Scott Danigole with the Fiscal Analyst; my name is Senator Lavon Heidemann, District 1, southeast Nebraska; the Appropriations Committee clerk is Anne Fargen; and the page for the day's name is Matthew. If you need some help, he's always there to...willing to do his part. And to my left...

SENATOR HARMS: John Harms, represent the 48th Legislative District.

SENATOR NELSON: John Nelson, central Omaha, District 6.

SENATOR FULTON: Tony Fulton, south Lincoln, District 29.

SENATOR HEIDEMANN: And then joining us later will be Senator Heath Mello from Omaha, District 5. At this time, we would like to remind you, if you have cell phones, to please shut them off as not to disrupt us later on. Testifier sheets are on the table and are near the back doors. We ask that you would please fill them out completely and put them in a box on the table when you testify. At the beginning of testimony, for the transcribers that follow, we ask that you please state and spell your name. Nontestifier sheets are near the back doors if you do not want to testify but would like to record your support or opposition. You only need to fill this out if you are not publicly testifying. If you have printed materials to distribute, please give them to the page at the beginning of your testimony. We need approximately 12 copies. And in the matter of time, we don't have a lot of bills before us today but if you will please keep your testimony concise and on topic we would appreciate it. With that, we will open up the public hearing on LB1030. Senator Dierks.

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SENATOR DIERKS: (Exhibit 1) Thank you, Chairman Heidemann and members of the Appropriations Committee. My name is Senator Cap Dierks, spelled C-a-p D-i-e-r-k-s, and I represent the 40th Legislative District. It is a pleasure to be here today. I do not believe I have ever brought a bill to the Appropriations Committee before during my 20 years in the Legislature, so this is a first. I may have picked a bad year to come before you after money, but I want to raise an issue that is very important to me. Eleven years ago, on this very day, the Ag Committee, which I chaired, held a hearing on LB835, the bill that created the Competitive Livestock Markets Act. I've handed out a copy of that bill's committee statement to show you the many proponents and opponents who came to Lincoln to testify. The hearing concluded at 7:20 p.m. that night and I made that bill my priority in 1999. LB835 passed with the emergency clause by a vote of 48 to nothing. Let me give you a very brief background on LB835. It contains provisions to prohibit packers from owning, keeping, or feeding livestock; had mandatory contract and price reporting provisions applicable to the swine industry prohibiting discriminatory pricing paid to swine producers; and mandatory contract and price reporting provisions applicable to the cattle industry. The committee statement has more in-depth information on each of these three features. After LB835 was passed, the federal government passed their own livestock reporting legislation the same year that preempted all state legislation dealing with price reporting. The only part of LB835 that remained in effect was the prohibition on packers to own, keep, or feed livestock, and the Attorney General's Office was in charge of enforcing that provision. A young attorney named Russ Barger was hired by then-Attorney General Don Stenberg to carry out the provisions of LB835, and Mr. Barger did a good job for the state of Nebraska. A few years after the passage of LB835, the funding was taken from the Attorney General's Office during difficult financial times. The statutory language remains on the books but there is no one to enforce the bill that had the votes of 48 legislators. I introduced LB1030 this year to appropriate money to this very important program. LB1030 would appropriate \$90,000 from the General Fund for fiscal year 2010-2011 and \$93,000 from the General Fund for fiscal year 2011-2012 to the Attorney General's Office to enforce the Competitive Livestock Markets Act. This money would allow the Attorney General to commence action in district court to enjoin the packers who violate the act. If the court finds the packer in violation of this act, the livestock are to be removed and sold and a fine assessed against the packer. Last fall, as a member of the Revenue Committee, I traveled across the state with the issue of sales tax, property tax, and then we got into some income tax issues. We had a hearing in Bloomfield, we had one in Halsey, and we had one in Scottsbluff, and then later we had one over in Bellevue. Everyone that came to talk to us, every rancher that came to talk to us, some in Bloomfield but more in Halsey and more in Scottsbluff, told us the story of how the property taxes were killing them. One gentlemen told us that it was costing him \$9 an acre just for the tax on...per acre, and it took 10 acres to carry a cow, so he was looking at \$90 an acre for 150-day pasture season, \$150...I'm sorry, \$90 an acre for 150 days on grass for his cows, and that didn't include the winter feed. And he said...I mean they

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said, and there were 20 of them that we talked to--I know ten in each place, maybe more than that--that they were going to quit business. They could no longer handle the property tax. So I would ask on occasion a couple people each place: If you were making a profit on your ranch, if you were able to pay income tax from the profit you made, would you be here talking about this property tax problem? And each of them said no; we aren't making a living on our place today. The ones that I talked to are saying they haven't paid any income tax for 15 years. Well, there's something wrong out there, gentlemen, when the cattle producers in this state are not making a profit and I say they're not making a profit because corporate America is shoving it down their throat. And we have an opportunity with this bill to bring some reality back and some profit back to the ranchers in this country. If that would happen, we would get enough income tax in this state to take care of a lot of \$90,000 bills. I got on this kick in the first place, I was in Washington, D.C., to a meeting of NCSL and I was upset with the fact that we were getting a...there was a process going on in this country that dealt with the merger of Continental Grain and Cargill, two of the largest grain traders in the nation, and it meant to me that we were forming a monopoly with that merger and losing competition for our grain producers. I didn't get much support for my problems when I went to D.C. I was visiting with some of our Congress people and said, I don't understand why...I was Chairman of the Legislature's Committee on Agriculture, I was also Vice Chair of an NCSL Ag Committee, and I had been a Vice Chair. I think they have about three of them, so Senator Paul Muegge from Oklahoma and I were two of them and we visited several Congress people in Washington, D.C., on that one trip. When I found that the senators were looking at the wall behind me instead of talking to me, I got frustrated and I wrote a couple naughty letters to them and then I tore them up, and I came back and got ahold of my committee counsel, Jamie Nygren, and I said we have a Packers and Stockyards Act in this country that is not being enforced; I think we need to get one for Nebraska that will be enforced. And that's when we put together this bill that we talked about, this LB835 that I've given you a copy of, and you can see the number of people that came and testified for it. The day that we were having the hearing, I had a call from Senator Bob Kerrey. He was in Omaha and he knew about the bill and he asked if he could come over and testify for it. I don't know that I've ever heard of a U.S. Senator testifying on behalf of a state legislator's bill, but he did. One of the things I remember about it was he came in, he said, you've got to get me out of here kind of quick, Senator Dierks, because I've got to catch a plane back for D.C., we're going to vote on whether to impeach Bill Clinton tonight. (Laughter) So that kind of stimulated getting him through the thing a little quicker. And then you'll see that there were actually five state senators who had signed on the bill, came in support. And if you look at the people that were supporting, it's just kind of a rewarding thing for me to go back and look at it and see all the people that did support. It was the Cattlemen, the Pork Producers, the Farm Bureau, Farmers Union, Livestock Marketing Association. They were there for support. They knew that the issue was serious and they knew they had to have some help, and I think this situation is still serious and we still need to provide some help to these producers out there. They need some help in keeping the

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packers honest. And right now the packers run whatever they want to do. Whatever they want to do, they do and...because we don't have anybody enforcing our law. There's some other aspects of that law that you should know about. When we got the bill passed, I took this bill when I got it drafted and I took it to five other states' senators that I knew, one from South Dakota, one from Minnesota, one from Iowa, one from Missouri, and one from Kansas, and I gave them copies of this bill and included all those deals. There was a ban on packer ownership, there was mandatory price reporting on a daily basis, there was two contracting portions of it. One contracting thing says that if a packer comes to you to offer you a contract on your cattle or hogs, you've got to let...the packer has to let this person, trying to sign the contract, take it to their auditor, their banker, their lawyer. The way they were doing those contracts in those days, you had to sign that contract when they brought it in the room and you couldn't take it out. We called it transparency in contracts. With their methods of doing that, they had put all the poultry people in this nation out of business. They had taken control of the poultry industry. They have since done this to the pork industry and they're trying to do it to the cattle industry. So we need to get all the help that we can to keep these independent, these ranchers and farmers, farmer-feeders independent. After we got those bills passed, they got them passed...they got...the price reporting bill part of it they got passed in South Dakota, Minnesota, Iowa, and Missouri. They didn't get it in Kansas. But with those three states and Nebraska, the packers saw that they were going to have to start reporting prices. So they went to Congress and they said, look, we need to have you pass price reporting legislation through Congress and preempt everything those states have done because we can't live with what the states have done. We tried for years to get price reporting, to make it mandatory at the Congressional level and the packers wouldn't let it happen. Now all of a sudden, they're there saying these crazy states have passed price reporting and we can't live with it so we want you to pass price reporting and preempt what those states have done, and that's what happened. So 1999, in August, I had a conversation with Senator Kerrey and I told him exactly what language we needed. He was going to make a sign and put it up in front of the Senate Ag Committee so they could know what they were dealing with, and that was in August of '99, and it got out of committee in '99. It came to...it came to the Department of Agriculture in I think September, maybe October, and they tried it for a couple weeks and it was a failure, so they took it back and they reworked it, and they keep bringing it back and I don't think it's really all that great yet. But the thing about it is, it had a seven-year sunset on it at Congress. So that was in '99, so the sunset would take place in 2006, and they have extended that process for a year at a time. I'm not sure exactly where they are now. But if that goes away at the federal level then we're back in business in Nebraska. Our price reporting is still valid. The Department of Agriculture is not all that excited about it because they don't have funding to do it either, but that's what would happen. So I've had lots of frustrations over the years and my whole emphasis has been to try to make this process profitable for my farmer and rancher friends, and in doing that I think we make Nebraska profitable for...from what they can put into our efforts, the farmers and ranchers, and they're not

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doing it today. It's just not there. So with your help...oh, I have to tell you, I want to ask you to put the bill out but I also know what kind of financial bind you're under and I just...I asked Senator Heidemann if I could have my day in court and I've had it. So I'd be glad to answer any questions you might have. I think there will be a couple people come in support. [LB1030]

SENATOR HEIDEMANN: Thank you, Senator. First of all, I appreciate the fact that you don't come before this committee very often. I will say that, I mean, it has been a couple of tough years for cattle feeders, that we calf and all the way out and feed them out, and I feel the pain that everybody else does. How long was this funded and was this successful when it did have money, do you believe? [LB1030]

SENATOR DIERKS: Yes, Russ Barger would have us over just about every month and give us the rundown on what he was doing. He went to courthouses and got records. He had complete files on all of this and he was a very busy guy, and I think that Russ is still in the practice, I think, around here in Lincoln some place. I haven't talked to him lately but I know that he visited with my son a little bit, but I think he just lost his job because they took the money away, and I'm not sure when that happened but I think it was while I was out of the Legislature, probably in the middle 2000s, 2004, 2005, someplace in there. [LB1030]

SENATOR HEIDEMANN: So it did operate for a while then. [LB1030]

SENATOR DIERKS: It did, yeah. [LB1030]

SENATOR HEIDEMANN: Just knowing that the times that we're in and that this will be a little bit difficult, looking at the people that was here in support of, the proponents, the Nebraska Cattlemen, the Nebraska Pork Producers Association, do you think that we could access any money from those associations to help with this endeavor if we could come up with some? [LB1030]

SENATOR DIERKS: Well, it would be worth asking, but I think that from what I can gather, why, they're just...they're hurting for money too. I should tell you one little thing that I heard that day. We got through with that hearing about 7:30 that night and when I walked out of the room, and it was this room right here, I was right over in the corner there and there was a big, tall fellow there, a real thin guy and gray-haired, and he came walking up to me and he says, Senator Dierks, he said, I wanted to testify at your hearing so bad but I just couldn't. And he started to cry. And he's standing there just kind of sobbing and shaking, so I put my arm around him and I said, well, tell me what's wrong. He said, well, the banker was in my...on the phone at my place this morning and told me they're selling me out in two weeks. As we went through the hearing and the opposition came up, a gentleman from IBP, he took a beating up there, I mean Senator Chambers is on the committee and everybody kind of picked on him, but finally it was

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over with. Well, I asked him this one question. I said, wouldn't it have been better for you to have provided a better market for your swine producers, that was when hogs got down under \$8 a hundred. I said, wouldn't it have been better for you and for IBP if you could have...if you would have kept these people in business by paying them a little more money? And he said, Senator, I don't remember getting any Christmas card from any farmers when I was trying to find hogs to slaughter. And I thought, well, you turkey. When I saw this guy, this old gentleman standing there crying, I thought I'll do everything I can to get this bill passed and I don't care what they think from IBP. And I don't think they're attitude has changed at all, you know? One of the things that bothers me is that I think that it isn't only in the hands of packers. I think it's also in the hands of the retailers, this price control. So I mean we've got to be careful, I mean we've got to pick on everybody that's a problem. So those are just some little things that happen. I can write a book about this whole thing, but that's just some of the stuff that happened. Really, some of it just bugged me. [LB1030]

SENATOR HEIDEMANN: Senator Nelson. [LB1030]

SENATOR NELSON: Thank you, Senator Heidemann. Thank you, Senator Dierks. This history was fascinating, very interesting to have you go through that. If I understand you, there was legislation in Congress now. Is it...are they required still to report or is there any reporting... [LB1030]

SENATOR DIERKS: Yes. [LB1030]

SENATOR NELSON: ...done at this time? [LB1030]

SENATOR DIERKS: Yeah, it's still part of the federal statutes,... [LB1030]

SENATOR NELSON: Okay. [LB1030]

SENATOR DIERKS: ...but I think that they're having difficulty putting something together that works, is the way I understand it. [LB1030]

SENATOR NELSON: Well, but my question is, is anybody reporting here in Nebraska? Is there anything to enforce at the present time? [LB1030]

SENATOR DIERKS: No, there's nothing to report. If you...the thing that happened, years ago all these slaughterhouses were on the river market. My granddad could pick up the market for cow slaughter about five different times in the morning. He'd start out at Sioux Falls and then Sioux City and then Omaha and then St. Joe and then Kansas City, and once in a while he could pick up Chicago. But he knew exactly what cows were selling for every day. And when they moved their packing houses away from the river and put them out in the area where the feedlots were, all of a sudden that price

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reporting went down the tube. They didn't report anything, and they don't really want anybody to know what they're paying. This is all a big secret. That's when they had problems with animal identification. That's the reason that I got the bill passed that allowed people who had registered their premise, because they thought it was mandatory, to remove the registration because it became voluntary. Because the packers want to know exactly where every hoof is and how much they weigh and how old they are because this is the way they control their process. [LB1030]

SENATOR NELSON: Well, is your bill prospective here or, if we found the money and got it to the Attorney General, is there something for that attorney to do as far as enforcement? [LB1030]

SENATOR DIERKS: Oh sure. [LB1030]

SENATOR NELSON: Okay. [LB1030]

SENATOR DIERKS: Let me tell you just one little thing that happened that I can recall. One of the meetings we had, he said, I want to show you these W-2s I got here, and it was from the Foxley feedlot right up by my ranch over there in Wheeler County. The W-2s were all issued by Monfort. I mean they were paying the people that work in the feedlot, you know, and those cattle went to slaughter at Monfort's plant down in Grand Island. I mean these are just some of the things that you can find out about so you know that there's input on the part of the packers. [LB1030]

SENATOR NELSON: Thank you. [LB1030]

SENATOR DIERKS: You bet. [LB1030]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you. [LB1030]

SENATOR DIERKS: Thanks. I think that I might stick around and see if there's something I can add on closing, so thanks for your attention, guys. [LB1030]

SENATOR HEIDEMANN: We will give you that right. Is anyone wishing to testify in favor of LB1030? [LB1030]

JIM PAPPAS: Mr. Chairman, committee members, my name is Jim Pappas, J-i-m P-a-p-p-a-s, here representing the Independent Cattlemen of Nebraska in favor of Senator Dierks's bill. We feel strongly if there's a...something in statute that needs to be enforced, and this is an integral part of trying to level the playing field and make fairness for the stock grower in the state of Nebraska, and if it would help I could get down on my hands and knees in front of the committee and beg, if you'd so like. But one thing I

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would recommend you could do is put the bill out on General File and wait and see what...if there's no money, the bill will never go anywhere. But when the next reporting period comes across and the economy is picking up, there might be a chance there may be enough money someplace that this could be funded this year or at least delayed a year, amended for what could start in the next following two years. [LB1030]

SENATOR HEIDEMANN: Sounds good. Are there any questions? Seeing none, thank you. Whoa, Senator Hansen. [LB1030]

SENATOR HANSEN: I want to thank you, Jim. My son has a new telephone and he gets market reports all the time. What are...what is needed that he can't find now? I mean there's people sitting at sale barns or... [LB1030]

JIM PAPPAS: Yeah. [LB1030]

SENATOR HANSEN: ...there's market reports from everywhere. [LB1030]

JIM PAPPAS: Well, I think from what Senator Dierks talked about, Senator, was that part is being covered supposedly on the federal level, the reporting period, on the markets. The senator is talking about the enforcement of ownership, packer ownership and feeding of cattle in Nebraska, which nobody is presently under the federal law or the nonenforceable state law now to check in to see if packers are involved in cattle feeding in the state. And that's where I think what he wants to get back in to and our interest is, too. Particularly I did not know about the W-2 forms he was talking about. [LB1030]

SENATOR HANSEN: Never heard that either. [LB1030]

JIM PAPPAS: Yeah. [LB1030]

SENATOR HANSEN: Thank you. [LB1030]

SENATOR HEIDEMANN: Senator Fulton. [LB1030]

SENATOR FULTON: Thank you, Mr. Chairman. Jim, thanks. A question I probably should have asked this of Cap, Senator Dierks, earlier. [LB1030]

JIM PAPPAS: You can. When he comes back you could sure ask him if you want, Senator. (Laugh) It won't hurt my feelings. [LB1030]

SENATOR FULTON: Well, you might...you may know. I probably will ask if I don't...so LB835 passes in 1999 funded. LB835 is still effectual as law in Nebraska, correct? Never been repealed. At what point did funding cease? Do you know for certain?

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[LB1030]

JIM PAPPAS: You'd have to ask the senator on that. [LB1030]

SENATOR FULTON: Okay. [LB1030]

JIM PAPPAS: I think as he indicated earlier, I think the mid-2000s I'm guessing.
[LB1030]

SENATOR FULTON: Okay. All right. I'll generate some more. Thank you. [LB1030]

JIM PAPPAS: Yeah. [LB1030]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you. Is there anybody else wishing to testify in favor of LB1030? Is anyone wishing to testify in opposition on LB1030? Does anybody wish to testify in the neutral position on LB1030? Seeing none, would Senator Dierks like to close? [LB1030]

SENATOR DIERKS: You guys make it simple. Yes, I would. I think that the question that Senator Fulton asked was when did the funding stop. I think it was either 2002 or 2003. It was after I was out of the Legislature, after I had lost my bid for a fifth term. And there was a budget crunch that came along and so they took the funding away. And I forgot what Senator Hansen asked. Did you get that answered all right, Tom? [LB1030]

SENATOR HANSEN: Well, I think that, yes, I think there's a difference between what the bill is looking for and the information that I can find on the Internet now. [LB1030]

SENATOR DIERKS: Okay. Well, I'm not...I'm not into the Internet too much I guess, but I know that price reporting that we want to know about is what...how did fat cattle sell at the marketplace this morning or this afternoon. We, when the Cattlemen that were after the same thing a number of years ago, Tom, when I was doing this and I met with Greg Ruehle and some of the Cattlemen at Brewster at Uncle Buck's and they were pushing this same item. They wanted price reporting on a daily basis and I just joined in with them at that meeting and they indicated, yes, they did want that, so we were on the same...the same path, I think. And I don't know, maybe the feeders have a better indication of what the price is than I think they do, but one of the things that's happened, if you're an independent feeder and you don't have a contract with a packer, you've got to sell on what they call the spot market, and today the spot market is about an hour on Thursday morning. If you don't sell that hour you got to wait till the next week. And if you've got cattle that are ready to sell and all of a sudden they're a little bit overweight, you're going to take a penalty on them. So I mean it's just kind of an important thing for us to know exactly where people are all the time on the market place. [LB1030]

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SENATOR HEIDEMANN: Senator Fulton. [LB1030]

SENATOR FULTON: Thank you, Mr. Chairman. The question again, so about 2002, 2003, so from 1999 to about 2003, when the Attorney General had authority and was enforcing the statute, can you explain to me what's the difference? I mean, did we see bodies flying in 1999 and 2000, 2001, and then in 2003, when it ceases to be funded, did we see anything different? Help me to see what the difference between when it was funded and when it's not funded would be, and then that would help me to see what the difference would be in the event that we funded this now. [LB1030]

SENATOR DIERKS: Well, when the bill was passed, it provided funding for a full-time equivalent in the Attorney General's Office. When they took the funding away, that spot left so they didn't have anybody to fund the condition. [LB1030]

SENATOR FULTON: Well, in the industry, I mean what have we seen in the industry? So I understand the threat of enforcement being there helps to enforce the intent of the statute of the law. When that went away, when it became clear that this FTE was gone, was there an accompanying change within the industry? Or was it discernible or could we tell? [LB1030]

SENATOR DIERKS: You know, the only thing I can tell you is that we know what he did when he was there, and we know that that stopped. So we know that the packers were able to continue doing their evil things, Senator Fulton, and maybe it's not so evil as I think but we know that they were able to continue doing their thing, and their thing, of course like all corporate America, is bottom line dollars. And if it means they're going to step on somebody, they'll step on somebody. [LB1030]

SENATOR FULTON: Okay. Thank you. [LB1030]

SENATOR DIERKS: You bet. [LB1030]

SENATOR HEIDEMANN: Senator Wightman. [LB1030]

SENATOR WIGHTMAN: Senator Dierks, could you see, was there a demonstrable difference in the market? And I don't know that you could ever tell that because you have trends in the cattle market in which it's in an up market and a down market and it becomes almost impossible to determine what causes those trends from time to time, high inventories, obviously. [LB1030]

SENATOR DIERKS: Yeah. Yeah. I don't think that you could tell. I don't think you could just say specifically, well, all of a sudden things went to hell in a handbasket. Excuse my French. I better change that, hadn't I? (Laughter) Let me tell you another story. One of the lobbyists here who lobbied for IBP came to me in the Rotunda one day and he said

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we're going to have a breakfast over at my place, like for you to come over and such and such will be there. I said, okay. So we went over there and there were four senators there and one of them had a problem with the smokestacks in Dakota City and one of them had a problem with something else, and the guy that was being hosted was John Tyson with Tyson Foods, and I didn't know who he was but I sat beside him at breakfast over there in Radcliffe's office, and when it came my turn, I asked him, I said, you know, my ranch is in Wheeler County and it's just two counties over from Loup County, which had the distinction of being the single, most poverty stricken county in the nation. And they still are but that was back in 2001 or '02. And I said, their median...their per capita income in that county was under \$5,000. The only thing they raise is cattle. I mean there's no row crops over there, maybe a little bit of corn raised to feed the calves when they wean them, but there's no other business in Loup County. It's just grass and cattle. And is this what we're coming to? Is this? Because I remember one time when Hyannis was considered...the county and Hyannis then was considered the wealthiest county in the nation because of the ranch industry. Things have changed drastically. That just isn't so anymore. The largest industry in our state is the cattle industry and it's...I'm worried about it. I really have great concerns about the cattle industry. If we can't make it profitable for people, the young ones aren't going to come back. I've got kids that would like to be involved with it and we're having difficulty making it. They're going to find something else to do. My grandkids are going to teaching or, I don't know, some other thing they're going to do, and I'd like for them to be able to come back to the ranch, but it's just not...the way it's working now, it's not possible. [LB1030]

SENATOR WIGHTMAN: Thank you. [LB1030]

SENATOR DIERKS: You bet. [LB1030]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you for coming in today, Cap. [LB1030]

SENATOR DIERKS: Thanks, guys. [LB1030]

SENATOR HEIDEMANN: With that, we will close the public hearing on LB1030 and open up the public hearing on LB1063, Senator Nelson. Welcome. [LB1030]

SENATOR NELSON: Thank you, Senator Heidemann. Thank you, members of the committee. Hopeful this topic will be a little more cheerful than we've considered so far. For the record, my name is John Nelson, spelled N-e-l-s-o-n. I represent District 6, midtown Omaha, and I'm here today to introduce LB1063. LB1063 is a simple bill which has the potential to save costs related to the Nebraska Arts Council. Section 1 of the bill permits the Arts Council to set aside up to 10 percent of the amount appropriated for administration for a fund dedicated to maintaining and repairing works of art. Section 2 of the bill permits the Arts Council to inventory certain works of art on a regular schedule

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instead of annually. Suzanne Wise, who is the executive director of the Nebraska Arts Council, will testify after me and will be able to answer many of any questions that you might have regarding the bill. I want to thank you for the opportunity to open and I will answer any questions that you might have at this time. [LB1063]

SENATOR HEIDEMANN: Setting up this fund, they're not allowed to do that right now? [LB1063]

SENATOR NELSON: No, there's no authority to, so far as I know, to establish a fund. [LB1063]

SENATOR HEIDEMANN: There's no other means to do this unless we establish a fund? [LB1063]

SENATOR NELSON: Well, maybe perhaps Suzanne Wise can answer that a little better than I but... [LB1063]

SENATOR HEIDEMANN: Okay. Are there any other questions? Seeing none, don't go too far. [LB1063]

SENATOR NELSON: All right. Thank you. [LB1063]

SENATOR HEIDEMANN: Is anyone else wishing to testify on LB1030, in favor of? [LB1063]

SENATOR WIGHTMAN: LB1063, isn't it? [LB1063]

SENATOR HEIDEMANN: LB1063? LB1063. What did I say, LB1030? [LB1063]

SENATOR WIGHTMAN: LB1030. [LB1063]

SENATOR HEIDEMANN: LB1063. Excuse me. Thank you, Senator Wightman. Welcome. [LB1063]

SUZANNE WISE: (Exhibits 2, 3, and 4) Thank you. Good afternoon, Chairman Heidemann and members of the Appropriations Committee. My name is Suzanne Wise and that's spelled S-u-z-a-n-n-e W-i-s-e. I am the executive director of the Nebraska Arts Council and I am testifying in favor of LB1063, which was introduced by Senator Nelson at our request, and I would like to thank him for doing so. Nebraska's 1 percent for art law, which took effect in 1979, is one of the oldest pieces of public art legislation in the country. The law determines that any capital construction approved by the Legislature of a public building in excess of \$500,000 for new construction and \$250,000 for renovation will allocate 1 percent of the budget for the commission and

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installation of artwork. The Nebraska Arts Council is the agency that has been designated to oversee the law's implementation. Since Nebraska's law was adopted, many other states have followed suit along with other subdivisions of government, including counties, cities, and transportation authorities. Although Nebraska's law has stood the test of time and is very effective in almost every respect, there are two components that require updating. The first is a provision that the Nebraska Arts Council inspect each work of art at least once each calendar year. In the 30 years since the law was written, the state of Nebraska has accumulated 465 works of art with an estimated total value in excess of \$5 million at 63 different sites across the state, and I am being conservative in that \$5 million figure. I was just thinking today one of the pieces that is in the handout for you is by a very famous New York artist and I suspect it alone is probably worth \$2 million to \$3 million. Since the person that oversees the 1 percent for art program can only devote ten hours per week to this aspect of her job, the proviso has become impractical and expensive to accommodate. The agency has been cited for this defect in responsibility during the past three audits conducted by the Auditor of Public Accounts. By inspecting only one-third of the artworks each year, the Nebraska Arts Council estimates it can save several thousand dollars annually in travel expenses and the agency will be able to be in compliance with the statute. It seems unlikely that a staff position dedicated completely to the public art program will be established in any time in the near future, so in order for the Arts Council to be in statutory compliance we feel that making the annual proviso more accommodating to the realities of twenty-first century staffing is a pragmatic solution. The language proposed by LB1063 will allow the Arts Council to adhere to a more practical schedule of oversight. The Arts Council has devised a strategy that ensures that each work of art is inspected every third year. Works of art that are not scheduled for inspection by the Arts Council will be given an inspection by the client agency using a checkoff form, and that particular form is also included in your handout so you can see what it looks like and the type of thing that we ask the client agency to be looking at when they look at a work of art. If a serious problem is noted, that work of art will be given immediate priority for Arts Council inspection. The law was written before the days of instant communication. If a work of art is damaged, the person who has discovered it can immediately e-mail a digital image for us to review and take action on. So this again is something that with the way we do business these days we can almost instantaneously assess something and at least over the phone can give remedial suggestions. The second issue is related to the first. Currently, the law does not address the issue of maintenance of the artwork in the state's collection. The client agency is not required to have a maintenance budget for the art in its care, nor is there any proviso in the Arts Council budget for this purpose. The legislation allows the Arts Council to assess a fee for conducting the commissioning and installation process for arts projects and, again, there is a schedule that we provide to the client agency that shows what fee we do assess, but it does not direct the Arts Council to apportion funds for future maintenance. LB1063 proposes to amend the legislation to allow the Arts Council to set aside a portion of its administrative fee for the establishment of an art maintenance fund. Most

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public art laws are now written with a maintenance requirement. With the value of the state's art collection, again estimated at well over \$5 million, it would make sense to have some sort of maintenance support in place to preserve the collection. Asking for additional funds from the state in light of so many other needs is unrealistic, so again LB1063 is looking at a pragmatic solution to the problem by allowing the Arts Council to set aside a portion of the administrative funds it receives for managing the percent for art projects and applying it to maintenance and repair, as these issues become necessary. Included in your handout is the fee structure, as I mentioned. The client agency is assessed this fee via an intergovernmental transfer. The Arts Council would administer this fund in much the same way it administers grant programs. Client agencies would develop a proposal to ask for these funds which would be distributed based on a set of criteria, including need, the severity of the repairs, and maintenance procedures that are required for the artwork. Generally speaking, two-dimensional works installed inside buildings require very little maintenance; however, exterior work, particularly welded metal sculpture, often require repair due to the severity of Nebraska's climate. Bronze sculpture requires periodic waxing, and stone and brick work use sealants to protect them from the elements. Having funds available for these purposes will help preserve the works and save them from extensive rehabilitation that can result from deferred maintenance. The Nebraska Arts Council feels that these minor adjustments to state statute 82-317, as outlined in LB1063, will save money and enhance good management practices, and we hope you will agree. We did include just some pictures, because I have a feeling that several of you may not be familiar with the public art program, and I've included some images that you've probably seen and maybe weren't aware that they were acquired under the 1 percent law, most notably one that you probably walk by a lot in one of the hearing rooms down the hall. Also, just the note cards are kind of tail end of when we did the work over in the Governor's residence. We had those note cards made for our use and for your use, this would have been state senators before your time, and we're now at the bottom of the barrel. Unfortunately, with funding the way it is, we can't afford to reprint them, so you're getting kind of the last batch. And I'll be happy to answer any questions. [LB1063]

SENATOR HEIDEMANN: Thanks, Suzanne. Are there any questions? Senator Hansen. [LB1063]

SENATOR HANSEN: Thank you. Suzanne, thank you for being here today. I really appreciate you creating a fund for the maintenance of art. I think it's great and I think it's also a great idea that you don't come with a funding request, especially this year. And you did mention toward the end of your testimony about the buildings that this art is housed in. [LB1063]

SUZANNE WISE: Uh-huh. [LB1063]

SENATOR HANSEN: How do you...how do you require, maintain...those buildings be

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maintained to preserve that art if you...you were talking about 63 different sites and some of them that are outside, I realize that, but the ones in buildings? [LB1063]

SUZANNE WISE: Part of our job is to establish good relationships with the client agencies and to know who it is at those sites that will be taking care of the art. It becomes particularly complex when we're working with the university system and with the state college system because they have multiple buildings and often have multiple people that take care of things. We're hoping actually that...and I talked about good maintenance practice, that by requiring someone who was going to walk down the hall and look at each one of those works of art every year and fill out this form, it kind of stays in their mind that they should be looking at it. Often with those interior pieces, it's really a matter of maybe the glazing on the frame gets cracked or sometimes there's a theft issue. Interestingly enough, the most theft I think we've had of public art is in Wayne State College. Go figure. I don't know why that is but there have been several pieces that have been lifted off the walls in our lovely city of Wayne for (laugh) over the years and I don't know why that is. Generally speaking, these works are well respected and usually do not have to worry too much about vandalism or wanton destruction. It's usually just a mistake. [LB1063]

SENATOR HANSEN: My underlying question I think, as I made some notes as you started your testimony, about the university system and the quilt center. [LB1063]

SUZANNE WISE: Uh-huh. [LB1063]

SENATOR HANSEN: And until I visited the quilt center, I didn't realize that some quilts are works of art. [LB1063]

SUZANNE WISE: Uh-huh. [LB1063]

SENATOR HANSEN: I thought it was bedding, but it's...there are some works of art there. And the maintenance, I know there was \$12 million given of private money... [LB1063]

SUZANNE WISE: Uh-huh. [LB1063]

SENATOR HANSEN: ...to create the quilt center and they do some restoration of the quilts out there, but the maintenance of the building is really not...that's the part the university is going to take over. The university has enough buildings now that lack maintenance. And that was my underlying question, is the university system, and I know they have some pretty extensive art collections and how you put the pressure on the university to maintain the building itself, so. [LB1063]

SUZANNE WISE: That's a very good question and I want to point out that because the

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International Quilt Study Center was built with private funds, it didn't fall under 1 percent. So we don't have anything to oversee at the quilt center. I will also point out that when we manage the selection committees, half of the committee comes from a client agency, half from the Arts Council. We have obviously a group of art experts in Nebraska that help with the process. Very rarely, Senator, do they select textiles because of that very issue. They know there is going to be higher maintenance problems with textiles and so it's very rare that you find textiles being purchased under 1 percent. [LB1063]

SENATOR HANSEN: Thank you. [LB1063]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thanks, Suzanne. [LB1063]

SUZANNE WISE: Thank you. [LB1063]

SENATOR HEIDEMANN: Is anyone else wishing to testify in favor of LB1063? Is anyone wishing to testify in opposition on LB1063? Is anybody wishing to testify in the neutral position on LB1063? Seeing none, would Senator Nelson like to close? [LB1063]

SENATOR NELSON: Thank you, Senator Heidemann and members of the committee. I think these are just very practical solutions. They aren't going to cost us any money. I should note that these projects only come along once in a while when you've got \$500,000 or \$250,000 in renovation, and so the fee is assessed at that time. The money that would be taken by this funding here and put in a maintenance fund has to last over a period of time but the money would be there to do this maintenance work. The other thing is just inspecting every three years under the procedure that was proposed. That would get us out from under the gun of the State Auditor every year dinging us for not complying with the law. Thank you very much for your attention. [LB1063]

SENATOR HEIDEMANN: Thank you. With that, we'll close the public hearing on LB1063, and we're done for the day. [LB1063]